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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,471	08/09/2001	Theodore Davidov	BHT-3143-3	2649

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DOUGHERTY & TROXELL  
SUITE 1404  
5205 LEESBURG PIKE  
FALLS CHURCH, VA 22041

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/924,471

Applicant(s)

DAVIDOV ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the food-engaging portion is of "substantially uniform thickness".

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1,2,4,7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidom in view of Schoenmakers (WO 95/07847).

Heidom teaches a lid comprising a) a top cover wall having a generally planar configuration, the top cover wall having outer periphery, a side wall extending downwardly from the periphery of the top cover wall and configured to engage the rim of the food container, the side wall including first and second wall portions wherein the second wall portion of one lid is configured to accept therein the first wall portion of another lid so as to enable a plurality of lids to be stacked in nested fashion and an eating utensil located in openings of the top cover wall, the utensil having a food engaging portion of substantially uniform thickness and an integral handle portion extending therefrom, the handle portion being configured to be gripped by a hand of a user, the one-piece eating utensil being removably connected to the top cover wall solely by a plurality of discrete, spaced apart, frangible connecting elements, a length of the one-piece eating utensil from an end of the food engaging portion to an end of the handle portion being less than a distance between opposite sides of the periphery of the top cover wall. The English translation provided by applicant specifies on page 1 of the specification and in claim 1 that the

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spoon is made in one piece with the lid, just as that of the instant invention is formed as one piece. Thus, the spoon inherently has a substantially uniform thickness.

Heidorn does not teach a one-piece eating utensil within a single opening through the lid cover wall, it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate the secondary handle extension 2 and form a one-piece eating utensil as taught by Schoenmakers. Doing so would have been an obvious matter of design choice to save on manufacturing costs, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Torniainen.

Heidorn as modified by Schoenmakers teaches the claimed lid except the eating utensil being a fork or a knife.

Torniainen teaches a lid having a detachable eating utensil wherein the utensil can be a spoon as seen in figure 1 or can be a fork, spork, or knife as described in col. 5, lines 40-42 and col. 13, lines 7-10.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of a fork and a knife as an eating utensil removably attached in the opening of the lid of Heidorn. Doing so provides alternative utensils as appropriate for the food contained within the associated container.

5. Claims 1,2,4,7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidorn in view of Schoenmakers (WO 95/07847).

Heidorn teaches a lid comprising a) a top cover wall having a generally planar configuration, the top cover wall having outer periphery, a side wall extending downwardly from the periphery of the top cover wall and configured to engage the rim of the food container, the

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side wall including first and second wall portions wherein the second wall portion of one lid is configured to accept therein the first wall portion of another lid so as to enable a plurality of lids to be stacked in nested fashion and an eating utensil located in openings of the top cover wall, the utensil having a food engaging portion of substantially uniform thickness and an integral handle portion extending therefrom, the handle portion being configured to be gripped by a hand of a user, the one-piece eating utensil being removably connected to the top cover wall solely by a plurality of discrete, spaced apart, frangible connecting elements, a length of the one-piece eating utensil from an end of the food engaging portion to an end of the handle portion being less than a distance between opposite sides of the periphery of the top cover wall. The English translation provided by applicant specifies on page 1 of the specification and in claim 1 that the spoon is made in one piece with the lid, just as that of the instant invention is formed as one piece. Thus, the spoon of Heidorn must inherently have a substantially uniform thickness.

Wherein it can be argued the food engaging portion of Heidorn is not of "substantially uniform thickness", it would have been obvious to one of ordinary skill in the art at the time the invention was made to manufacture the spoon of a "substantially uniform thickness". Doing so would eliminate the need for a more expensive mold having different thicknesses.

Heidorn does not teach a one-piece eating utensil within a single opening through the lid cover wall, it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate the secondary handle extension 2 and form a one-piece eating utensil as taught by Schoenmakers. Doing so would have been an obvious matter of design choice to save on manufacturing costs, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

6. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Torniainen.

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Heidorn as modified by Schoenmakers teaches the claimed lid except the eating utensil being a fork or a knife.

Torniainen teaches a lid having a detachable eating utensil wherein the utensil can be a spoon as seen in figure 1 or can be a fork, spork, or knife as described in col. 5, lines 40-42 and col. 13, lines 7-10.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of a fork and a knife as an eating utensil removably attached in the opening of the lid of Heidorn. Doing so provides alternative utensils as appropriate for the food contained within the associated container.

#### ***Response to Arguments***

7. Applicant's arguments filed November 05, 2004 have been fully considered but they are not persuasive.

Applicant argues the spoon of Heidorn is not inherently of a "substantially uniform thickness" because the specification is silent to that specific teaching. Inherency does not require a specific teaching since it is based upon a well-established and known characteristic or trait. See, for instance, Marshall et al. (US 3,955,742) which teaches an integrally molded lid and spoon, the spoon's food engaging portion being of "substantially uniform thickness". See figure 1.

Moreover, it is pointed out that the instant specification is silent regarding the food-engaging portion being of "substantially uniform thickness". The drawings *appear* to show this feature (thus no matter rejection was raised by the examiner). Since the specification of the instant applicant does not specifically teach the food engaging portion of the spoon is of a "substantially uniform thickness", it is reasoned that this feature is inherent in the manufacture of a one-piece lid and eating utensil.

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It is further submitted that a spoon of varying thickness would be specifically taught in the prior art reference. See for instance Schoenmakers teaching of a support rib surrounding the spoon perimeter.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

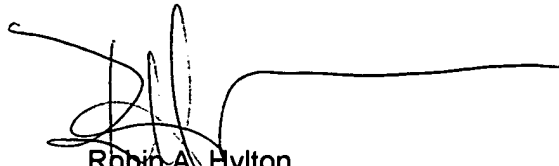
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 18, 2005

  
Robin A. Hylton  
Primary Examiner  
GAU 3727